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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P. 279/2019 and CRL.M.A. 5230/2019

SUJIT KUMAR THAKUR

..... Petitioner

Through: Mr Ajay Kumar Pipaniya, Ms Pallavi
Pipaniya and Mr Akash Sethi,
Advocates.

versus

STATE

..... Respondent

Through: Ms Kusum Dhalla, APP for State
along with SI Lokesh Singh.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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29.01.2020

1. The petitioner has filed the present petition impugning a judgment dated 07.01.2019 passed by the Additional Sessions Judge (North District) rejecting the petitioner's appeal against the judgment dated 26.05.2018, whereby the petitioner was convicted of the offences under Sections 279/304A of the IPC.
2. By an order dated 02.06.2018 passed by the learned MM, the petitioner was sentenced to serve simple imprisonment for a period of two months for an offence under Section 279 of the IPC and one year of simple imprisonment for an offence under Section 304A of the IPC. He was also imposed a fine of ₹5,000/-. The said order was also the subject matter of an appeal before the learned ASJ and the same was upheld.
3. The petitioner was prosecuted pursuant to an FIR bearing no. 41/2007 under Sections 279/304A of the IPC, registered with Police Station Samai Pur Badli. The said FIR was lodged in view of the incident that had

occurred on 14.01.2007, at 03:00 a.m., near Siras Pur Mod, GTK Road. At the material time, the petitioner was driving a vehicle (Tata Tempo) bearing no. HR- 55-7427 and it is alleged that he was driving it in a rash and negligent manner. The vehicle driven by the petitioner had collided with the rear side of the dumper (truck) bearing no. HR-46-9553. As a consequence of the said collusion, one Sh. Pankaj Tomar, who was a co-occupant with the petitioner in the vehicle driven by him, suffered injuries and subsequently, succumbed to them. Investigation was conducted and a report under Section 173 of the Cr.P.C. was filed, pursuant to which charges were framed.

4. The prosecution examined nine witnesses to establish its case. Retired ASI/tech. Devender Kumar was examined as PW9. He proved the mechanical inspection report of the two vehicles – Tata tempo bearing no. HR 55 7427 and Tata Truck bearing no. HR 46 9553. After examining the evidence obtaining in the said case, the Court also found that the allegation, that the petitioner was driving in a rash and negligent manner, was substantiated. The Trial Court concluded that the death of the deceased was a direct consequence of his rash and negligent driving.

5. Aggrieved by the same, the petitioner preferred an appeal before the Learned ASJ. However, the said appeal was also rejected.

6. The learned counsel appearing for the petitioner submits that the Trial Court, as well as the learned ASJ, failed to appreciate the testimony of the driver of the truck (dumper), Girish Kumar, who deposed as PW3. The learned counsel submitted that examination of his testimony clearly

established that at the time of the incident, there was low visibility on account of dense fog and the accident was caused due to the driver of the vehicle in the front applying brakes suddenly. The same also resulted in a sequential collision between the vehicles that were behind the vehicle being driven by the petitioner. He submitted that this substantiated the petitioner's case that he had been hit from a vehicle following behind; resultantly, the vehicle being driven by him was projected into the rear side of the truck driven by PW3. He also stated that PW3's testimony established that the speed of the vehicles was low.

7. The aforesaid contention is clearly unmerited. First of all, the testimony of PW3 was considered and duly evaluated by the Trial Court as well as the learned ASJ.

8. In his testimony, PW3 had testified as to the collusion between the two vehicles. He stated that one tempo bearing no. HR 55 7427 had come from behind and struck the rear of the truck being driven by him. He stated that thereafter, he had parked the vehicle on the side of the road and had come to the tempo and found the accused. He had also unequivocally stated that the accident had occurred due to the negligence of the aforesaid person driving the tempo. He was cross-examined. In his cross-examination, he denied the suggestion that the accident had occurred due to his fault.

9. The learned counsel appearing for the petitioner relies on the testimony of PW3 to the effect that he was informed by the accused that he had been hit by another vehicle in a sequence where two or three vehicles had hit each-other from the rear side, due to which his vehicle hit into the

vehicle driven by PW-3.

10. The said testimony was also considered by the learned MM and the same was rejected. PW3 clearly deposed that he had not seen two or three vehicles that had collided with each-other. Importantly, this was also not the petitioner's stand in his statement recorded under Section 313 of the CrPC.

11. The learned MM had considered the aforesaid testimony and found that the explanation that there were two or three vehicles that were following behind the Tempo driven by the petitioner, had collided resulting in the vehicle being driven by the petitioner dashing and colliding with the rear of the truck in the front, was also not supported by the evidence on record, including the technical report. The Court had noticed that there was no damage to the rear of the vehicle driven by the accused and, therefore, the suggestion that another vehicle had collided with the petitioner's vehicle from the rear, could not be accepted.

12. This Court finds no manifest error in the impugned judgment of the learned ASJ.

13. The petition is unmerited and is, accordingly, dismissed. The pending application is disposed of.

14. This Court is informed that the petitioner is currently not in custody and is required to surrender. The petitioner is directed to surrender on or before 29.02.2020.

VIBHU BAKHRU, J

JANUARY 29, 2020/RK